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Public Prosecutor v Rosmah bt Mansor

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HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO WA-45–9–03 OF 2019
COLLIN SEQUERAH J
12 JUNE 2019

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Criminal Procedure — Jurisdiction of court — Transfer of case — Application to transfer criminal case from one High Court to another — Whether court was possessed of powers to effect lateral transfer of case in court to another High Court — Courts of Judicature Act 1964 Schedule para 12 — Criminal Procedure Code s 417

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The applicant made an oral application to transfer the case involving the respondent from this court to Criminal High Court No 2. The respondent was charged in the case of Criminal Case No WA-62R-47–10 of 2018 ('ROSMAH AMLA') at the sessions court for money laundering offences. The respondent was again charged in the case of Criminal Case No WA-62R-54–11 of 2018 ('ROSMAH SOLAR') at the sessions court for offences under the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act'). On the same day one Rizal bin Mansor was charged in the case of Criminal Case No WA-61R-25-11 of 2018 ('RIZAL SOLAR') at the sessions court for offences under the MACC Act. Upon an application by the respondent, the learned High Court judge in Criminal Division No 3 at Kuala Lumpur transferred ROSMAH AMLA to the High Court at Kuala Lumpur for trial. Thereafter, ROSMAH AMLA was assigned to High Court No 2 for trial. On 19 December 2018, the prosecution orally informed the learned High Court judge No 2 of its intention to apply for joint trial of ROSMAH AMLA, ROSMAH SOLAR and RIZAL SOLAR. The application for joint trial was currently put on hold, awaiting the transfer of this case to the said High Court No 2. On 9 January 2019, the same learned High Court Judge No 2 ordered the transfer of RIZAL SOLAR to the High Court at Kuala Lumpur for trial upon an application by the accused Rizal bin Mansor. Thereafter, RIZAL SOLAR was assigned to this court for trial. On 18 February 2019, this court ordered the transfer of RIZAL SOLAR to High Court No 2 upon an application by the prosecution. The transfer was not opposed by learned counsel in RIZAL SOLAR. On 15 March 2019, this court ordered the transfer of ROSMAH SOLAR from the sessions court to the High Court at Kuala Lumpur for trial upon an application by the prosecution under s 417(1)(e) and (1)(cc) of the Criminal Procedure Code ('the CPC'). Thereafter, the case was assigned to this court for trial. The respondent objected the application and submitted that the Courts of Judicature Act 1964 ('the CJA') did not give the

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jurisdiction or power for this court to make a unilateral transfer to another court and that the CJA was silent on this.

Held, granting the application:

(1) Paragraph 12 of the Schedule to the CJA conferred the power to effect a lateral transfer. When the court made the order to transfer the case from the sessions court pursuant to s 417(1)(e) of the CPC and subsequently ordered the case to be transferred to and tried before the High Court under s 417(1)(cc) of the CPC, the effect was that the trial fixed previously before the sessions court would now be tried before 'the' High Court and not before 'a' High Court. This interpretation gave full effect to the powers stipulated in s 417 of the CPC. The provisions in para 12 of the Schedule to the CJA and the stipulations in s 417 of the CPC were harmonious and not contrary to each other (see paras 24, 34 & 38).

(2) This case was best tried together with the *RIZAL SOLAR* case. Should this case not be transferred, the prosecution would encounter the situation where they will be calling the same set of witnesses twice. The allegation of mala fides that as soon as this case was transferred to court No 2, the said Rizal Mansor will turn crown witness against the respondent, was mere speculation and conjecture. There was no merit to the argument that the applicant had indulged in judge shopping or that there was anything sinister involved in this application beyond the mere fact that it was convenient to have a joint trial under the circumstances (see paras 49, 52 & 54).

[Bahasa Malaysia summary

Pemohon membuat permohonan lisan untuk memindahkan kes yang melibatkan responden dari mahkamah ini ke Mahkamah Tinggi Jenayah No 2. Responden didakwa dalam Kes Jenayah No WA-62R-47–10 tahun 2018 ('ROSMAH AMLA') di mahkamah sesyen untuk kesalahan pengubahan wang haram. Responden sekali lagi didakwa dalam Kes Jenayah No WA-62R-54–11 tahun 2018 ('ROSMAH SOLAR') di mahkamah sesyen atas kesalahan di bawah Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 ('Akta'). Pada hari yang sama seorang Rizal bin Mansor telah didakwa dalam Kes Jenayah No WA-61R-25–11 tahun 2018 ('RIZAL SOLAR') di mahkamah sesyen atas kesalahan di bawah Akta. Melalui permohonan oleh responden, hakim Mahkamah Tinggi yang bijaksana di Bahagian Jenayah No 3 di Kuala Lumpur memindahkan ROSMAH AMLA ke Mahkamah Tinggi di Kuala Lumpur untuk perbicaraan. Selepas itu, ROSMAH AMLA telah ditugaskan ke Mahkamah Tinggi No 2 untuk perbicaraan. Pada 19 Disember 2018, pihak pendakwaan secara lisan memaklumkan hakim Mahkamah Tinggi No 2 yang bijaksana berhasrat untuk memohon perbicaraan bersama ROSMAH AMLA, ROSMAH SOLAR dan RIZAL SOLAR. Permohonan perbicaraan bersama kini ditangguhkan, menunggu pemindahan kes ini ke Mahkamah Tinggi No

2. Pada 9 Januari 2019, hakim Mahkamah Tinggi yang bijaksana yang sama mengarahkan pemindahan RIZAL SOLAR ke Mahkamah Tinggi Kuala Lumpur untuk dibicarakan atas permohonan oleh tertuduh Rizal bin Mansor. Selepas itu, RIZAL SOLAR ditugaskan ke mahkamah ini untuk perbicaraan. Pada 18 Februari 2019, mahkamah ini mengarahkan pemindahan RIZAL SOLAR ke Mahkamah Tinggi No 2 atas permohonan oleh pihak pendakwaan. Pemindahan itu tidak ditentang oleh peguam yang bijaksana di RIZAL SOLAR. Pada 15 Mac 2019, mahkamah ini mengarahkan pemindahan ROSMAH SOLAR dari mahkamah sesyen ke Mahkamah Tinggi di Kuala Lumpur untuk perbicaraan atas permohonan oleh pihak pendakwaan di bawah s 417(1)(e) dan (1)(cc) Kanun Tatacara Jenayah ('KTJ'). Selepas itu, kes itu ditugaskan ke mahkamah ini untuk perbicaraan. Responden membantah permohonan itu dan mengemukakan bahawa Akta Mahkamah Kehakiman 1964 ('AMK') tidak memberi bidang kuasa atau kuasa untuk mahkamah ini untuk membuat pemindahan unilateral ke mahkamah lain dan bahawa AMK diam mengenai perkara ini.

Diputuskan, membenarkan permohonan:

(1) Perenggan 12 Jadual AMK memberikan kuasa untuk pemindahan secara lateral. Apabila mahkamah membuat perintah untuk memindahkan kes itu dari mahkamah sesyen menurut s 417(1)(e) KTJ dan seterusnya mengarahkan kes itu dipindahkan ke dan dibicarakan di hadapan Mahkamah Tinggi di bawah s 417(1)(cc) KTJ, kesannya adalah bahawa perbicaraan yang telah ditetapkan sebelum ini sebelum Mahkamah Tinggi sekarang akan dibicarakan sebelum 'Mahkamah Tinggi' tersebut dan bukan sebelum satu 'Mahkamah Tinggi'. Tafsiran ini memberi kesan sepenuhnya kepada kuasa-kuasa yang ditetapkan dalam s 417 KTJ. Peruntukan dalam perenggan 12 Jadual AMK dan ketetapan dalam s 417 KTJ adalah harmoni dan tidak bertentangan dengan satu sama lain (lihat perenggan 24, 34 & 38).

(2) Kes ini adalah terbaik dibicarakan bersama dengan kes RIZAL SOLAR. Sekiranya kes ini tidak dipindahkan, pihak pendakwaan akan menemui situasi di mana mereka akan memanggil set saksi yang sama dua kali. Tuduhan *mala fide* bahawa sebaik sahaja kes ini dipindahkan ke mahkamah No 2, Rizal Mansor akan menjadi 'crown witness' terhadap responden, hanyalah spekulasi dan sangkaan. Tidak ada merit kepada hujah bahawa pemohon telah terlibat dalam 'judge shopping' atau ada sesuatu yang mencurigakan terlibat dalam permohonan ini di luar fakta bahawa mudah untuk mempunyai perbicaraan bersama dalam keadaan tersebut (lihat perenggan 49, 52 & 54).]

Cases referred to

Ayer Molek Rubber Co Bhd & Ors v Insas Bhd & Anor [1995] 2 MLJ 734, CA (refd)

A *Dato Mohamed Hashim Shamsuddin v Attorney-General, Hong Kong* [1986] 2 MLJ 112; [1986] CLJ Rep 89, SC (refd)
Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed [1997] 2 MLJ 271; [1997] 3 CLJ 332, SC (refd)
Malacca Securities Sdn Bhd v Loke Yu [1999] 6 MLJ 112; [1998] 3 CLJ 22,
B HC (refd)
PP v Cheah Cheng Eng [1986] 2 MLJ 39, SC (refd)
PP v Lim Shui Wang & Ors [1979] 1 MLJ 65, FC (refd)
PP v Rizal bin Mansor (Criminal Case No WA-61R-25–11 of 2018) (unreported), sc (refd)
C *PP v Rosmah binti Mansor* (Criminal Case No WA-62R-54–11 of 2018) (unreported), sc (refd)
PP v Rosmah binti Mansor (Criminal Case No WA-62R-47–10 of 2018) (unreported), sc (refd)
Rashidah bte Mohammad v Mayban Finance Bhd [2003] 5 MLJ 529; [2003] 2
D CLJ 542, HC (refd)
Riviera Bay Resort & Condo Management Sdn Bhd v Sri Rimba Mentari Development Sdn Bhd [2003] 4 MLJ 40; [2003] 8 CLJ 720, HC (refd)

Legislation referred to

E Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activity Act 2001 ss 3(1), 4(1)(a)
Courts of Judicature Act 1964 ss 3, 20, 25, 25(2), Schedule, para 12
Criminal Procedure Code s 417, 417(1), (1)(cc), (1)(e), (3)(b)
F Federal Constitution arts 8, 121
Malaysian Anti-Corruption Commission Act 2009 ss 16(a)(A), 24(1)

Gopal Sri Ram (Mohd Dusuki Mokhtar, Farizul Hassan Bakri & Poh Yih Ti with him) (Public Prosecutor, Attorney General's Chambers) for the applicant.
G *Jagjit Singh (Akberdin Abd Kadir, Ummi Kartini Abdul Latif & Azrul Zulkifli Stork with him) (Akberdin & Co) for the respondent.*

Collin Sequerah J:

INTRODUCTION

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[1] The applicant made an oral application to transfer the case involving the respondent in *Public Prosecutor v Rosmah bt Mansor* Criminal Case No WA-45-9-03 of 2019 ('ROSMAH SOLAR') from this court to Criminal High Court No 2 presided by Zaini Mazlan J.

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BACKGROUND FACTS

[2] On 4 October 2018, the respondent was charged in the case of *Public Prosecutor v Rosmah binti Mansor* (Criminal Case No WA-62R-47–10 of

2018) ('ROSMAH AMLA') at the Sessions Court, Kuala Lumpur with a total of 17 charges for money laundering offences under s 4(1)(a) of the following Acts:

(a) Anti-Money Laundering and Anti-Terrorism Financing Act 2001 [Act 613]; and

(b) Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activity Act 2001 [Act 613].

('the AMLATFPUAA 2001')

[3] Subsequently, on 15 November 2018, the respondent was again charged in the case of *Public Prosecutor v Rosmah bt Mansor* (Criminal Case No WA-62R-54–11 of 2018) ('ROSMAH SOLAR') at the Sessions Court, Kuala Lumpur with two charges for offences under s 16(a)(A) and punishable under s 24(1) of the Malaysian Anti-Corruption Commission Act 2009 [Act 694].

[4] On the same day vis 15 November 2018, one Rizal bin Mansor was charged in the case of *Public Prosecutor v Rizal bin Mansor* (Criminal Case No WA-61R-25–11 of 2018) ('RIZAL SOLAR') at Sessions Court, Kuala Lumpur with four charges for offences under s 16(a)(A) and punishable under s 24(1) of the Malaysian Anti-Corruption Commission Act 2009.

[5] On 29 November 2018, upon an application by the respondent, the learned High Court judge in Criminal Division No 3 at Kuala Lumpur transferred ROSMAH AMLA to the High Court at Kuala Lumpur for trial. Thereafter, ROSMAH AMLA was assigned to High Court No 2 for trial.

[6] On 19 December 2018, the prosecution orally informed the learned High Court Judge No 2 of its intention to apply for joint trial of ROSMAH AMLA, ROSMAH SOLAR and RIZAL SOLAR. The application for joint trial is currently put on hold, awaiting the transfer of this case to the said High Court No 2.

[7] On 9 January 2019, the same learned High Court Judge No 2 ordered the transfer of RIZAL SOLAR to the High Court at Kuala Lumpur for trial upon an application by the accused Rizal bin Mansor. Thereafter, RIZAL SOLAR was assigned to this court for trial.

[8] On 18 February 2019, this High Court ordered the transfer of RIZAL SOLAR to High Court No 2 upon an application by the prosecution. The transfer was not opposed by learned counsel in RIZAL SOLAR.

A **[9]** On 15 March 2019, this court ordered the transfer of ROSMAH SOLAR from the sessions court to the High Court at Kuala Lumpur for trial upon an application by the prosecution under s 417(1)(e) and (1)(cc) of the Criminal Procedure Code. Thereafter, the case is assigned to this court for trial.

B SUBMISSION OF PARTIES

[10] The applicant submitted that because the case involving Rizal bin Mansor (RIZAL SOLAR) who is effectively a co-accused with the respondent, is currently registered and pending in Criminal High Court No 2, it would be convenient if the case involving the respondent in this court be transferred there as they intend to apply for a joint trial.

[11] Learned counsel for the respondent, in objecting to the application submitted that the Courts of Judicature Act 1964 ('the CJA') does not give the jurisdiction or power for this court to make a unilateral transfer to another court and that the CJA is silent on this. The respondent went on to submit that the power to transfer a case from one High Court to another only resides with the Chief Judge of Malaya ('CJM') pursuant to s 20 of the CJA.

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[12] The applicant in response, submitted that to the contrary the provisions in s 25 read together with para 12 of the Schedule to the CJA vests this court with the power to order such a transfer.

F **[13]** The respondent in retort said that the powers in s 25 of the CJA are mere general provisions. It was also contended that the applicant ought to apply for a joint trial first before making this application.

G **[14]** The pendulum swinging back to the applicant, it was submitted that the application for a joint trial must be made before the same judge. This is only possible if the case is transferred first. It was also contended that the efforts of the respondent in resisting the application was to delay the matter which was of public interest.

H ANALYSIS AND FINDINGS

[15] The sole issue here is whether this court is possessed of powers to effect a lateral transfer of a case in this court to another High Court.

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[16] In determining this issue, it is necessary to examine the provisions of s 25 of the CJA which deal with the powers of the High Court. The section reads as follows:

25 Powers of the High Court

(1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.

(2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:

Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

[17] The section therefore vests the High Court with the following powers:

(a) those which are vested in the court immediately prior to Malaysia Day;

(b) those which may be vested in it by written law in force; and

(c) those powers described as additional powers set out in the Schedule to the Act.

See *Dato Mohamed Hashim Shamsuddin v Attorney-General, Hong Kong* [1986] 2 MLJ 112; [1986] CLJ Rep 89.

[18] The additional powers in sub-s 2 above are set out in the Schedule.

[19] Paragraph 12 to the Schedule relates to transfer of proceedings and reads as follows:

Transfer of proceedings

12. Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:

Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

[20] It will be noticed that there is power vested in the High Court to transfer any proceedings to any other court, inter alia, s 3 of the CJA which is the interpretation section defines 'Court' as follows:

means the Federal Court, the Court of Appeal or the High Court, as the case may require.

[21] A plain and literal reading of the paragraph therefore would mean that this court is seized with jurisdiction and power to order a transfer of a case registered before it to another High Court of co-ordinate jurisdiction which is of course a lateral transfer.

[22] The words 'any proceedings' in para 12 to are also sufficiently wide to cover the power of the High Court to order the transfer of the following proceedings:

(a) from the High Court to any subordinate court and vice versa;

(b) from any sessions court to any sessions court and vice versa; and

(c) from any sessions court to any magistrate's court and vice versa.

See *Riviera Bay Resort & Condo Management Sdn Bhd v Sri Rimba Mentari Development Sdn Bhd* [2003] 4 MLJ 40; [2003] 8 CLJ 720.

[23] It was held that s 25(2) and the Schedule to the Act are not merely declaratory of the powers of the High Court but are power-conferring words. Once powers are conferred to the courts by the Legislature, judges should not shy away from these powers by putting up all sorts of barricades along their path. See *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff bin Mohamed* [1997] 2 MLJ 271; [1997] 3 CLJ 332 per Mohd Azmi FCJ.

[24] I am fortified in my reasoning above that para 12 to the Schedule confers the power to effect a lateral transfer by the decision in *Rashidah bte Mohammad v Mayban Finance Bhd* [2003] 5 MLJ 529; [2003] 2 CLJ 542, where His Lordship Hishamudin Yunus J (as he was then) held:

> ... In my judgment, by virtue of para 12 of the Schedule, I have the power to grant the application to transfer the proceeding from this court to the High Court of Kuala Terengganu, regardless of the fact that, other than the Rules of the High Court 1980, there are, presently, no rules of court regulating the exercise of such power. I have carefully examined para 12, however, I fail to see in what way the absence of such rules of court precludes this court from exercising the power granted by this paragraph. *To my mind, para 12 is a simple, clear and straightforward provision: a High Court is empowered to transfer a proceeding to any other High Court, and the exercise of such power to transfer the proceeding is only subject to the rules of court, if there are any such rules* ... (Emphasis added.)

[25] Dato' Jagjit Singh of counsel for the respondent however argued against such interpretation because of the proviso to para 12 which subjects such power to be only exercised in such manner as may be prescribed by any rules of court. In this case, the relevant rules of court are the Criminal Procedure Code ('the CPC').

[26] The relevant section in the CPC relating to transfer of cases is s 417(1) which reads as follows:

> 417 High Courts power to transfer cases

(1) Whenever it is made to appear to the High Court: A

(a) that a fair and impartial trial cannot be had in any criminal Court subordinate to it;

(b) that some question of law of unusual difficulty is likely to arise;

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the same; B

(d) that an order under this section will tend to the general convenience of the parties or witnesses; or

(e) that such an order is expedient for the ends of justice, or is required by any provision of this Code, C

it may order:

(aa) that any offence be tried by any Court not empowered under sections 121 to 126 but in other respects competent to try such offence; D

(bb) that any particular case or class of cases be transferred from a criminal Court subordinate to it to any other such criminal Court of equal or superior jurisdiction; or

(cc) that any particular criminal case be transferred to and tried before the High Court. E

(dd) (Deleted by Act A908). (ee) (Deleted by Act A908).

(2) The High Court may make an order under subsection (1) either on the report of the lower Court, or on the application of the Public Prosecutor or the accused person, or on its own initiative. F

(3)

(a) When an order is made under paragraph (1)(cc) the lower Court before which the trial of the offence against the accused person is pending shall cause the accused person to appear or be brought before the High Court on the date specified in the said order or as soon as may be practicable if no such date is specified. G

(b) When the accused person appears or is brought before the High Court in accordance with paragraph(a), it shall fix a date for his trial which shall be held in accordance with the procedure under Chapter XX. H

(4) The Court to which a case is transferred under this section may act on the evidence already recorded in a trial or partly so recorded and partly recorded by itself, or it may re-summon the witnesses and re-commence the trial:

Provided that in any case so transferred the Public Prosecutor or the accused person may, when the Court to which the case is transferred commences its proceedings, apply that the witnesses or any of them be re-summoned and re-heard. I

[27] Learned counsel for the respondent submitted further that the effect of

A sub-s (3)(b) of s 417 of the CPC is that after having granted the transfer order of this case from the sessions court to the High Court, this court must now fix trial dates before it and that there is no necessity to transfer this case to some other court.

B **[28]** It was also submitted that there is no power to order or to make a lateral transfer to another court as there is no such power contained in the CPC. This, it was submitted, was to prevent judge shopping and judge picking as happened in the case of *Ayer Molek Rubber Co Bhd & Ors v Insas Bhd & Anor* [1995] 2 MLJ 734.

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[29] The lateral transfer will therefore offend art 8 of the Federal Constitution which entitles everyone to equal protection before the law.

D **[30]** It was still further submitted by learned counsel for the respondent that there exists mala fide in this application which is that the prosecution intended to turn the said Rizal Mansor, whose case is now pending in High Court No 2, into a crown witness in the case against the respondent the moment this case is transferred there.

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[31] With the greatest of respect to learned counsel for the respondent, I find myself unable to accede to the proposition that once the case was transferred from the sessions court to this court, s 417 of the CPC stipulates that this court must proceed to fix trial dates before it.

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[32] The argument advanced by learned counsel for the respondent ignores the fact that there is only one High Court of co-ordinate jurisdiction, which in this case is the High Court of Malaya. See art 121 of the Federal Constitution.

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[33] Section 417(1) states 'Whenever it is made to appear to the High Court' as opposed to 'Whenever it is made to appear to a judge of the High Court'. I agree with the submission advanced by learned counsel for the applicant that the significance of this is that the High Court acts and functions as a unit.

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[34] Therefore, when this court made the order to transfer the case from the sessions court pursuant to s 417(1)(e) and subsequently ordered the case to be transferred to and tried before the High Court under s 417(1)(cc), the effect was that the trial fixed previously before the Sessions Court would now be tried
I before 'the' High Court and not before 'a' High Court.

[35] Contrary to any anticipated argument that this is but a mere exercise in frivolous semantics, I tend to agree with learned counsel for the applicant that this interpretation gives full effect to the powers stipulated in s 417 of the CPC.

[36] The practical effect of the High Court of Malaya having co-ordinate jurisdiction is that there is only one High Court that sits in various branches throughout the peninsular.

[37] *Mallal's Criminal Procedure*, (7th Ed) para 1941 at p 722, in commenting on the powers of the High Court in s 417 of the CPC stated that a transfer may either be a 'lateral transfer' or a 'vertical transfer'. The only prohibition on the power under s 417 is that the High Court cannot order the transfer of a case from the High Court to a subordinate court. See *Mallal's Criminal Procedure*, (7th Ed) in para 1952 at p 729 and the cases of *Public Prosecutor v Lim Shui Wang & Ors* [1979] 1 MLJ 65 and *Public Prosecutor v Cheah Cheng Eng* [1986] 2 MLJ 39 respectively.

[38] The provisions in para 12 of the Schedule to the CJA and the stipulations in s 417 of the CPC are therefore harmonious and not contrary to each other.

[39] The case of *Public Prosecutor v Lim Shui Wang & Ors* cited by learned counsel for the respondent in support of the proposition that this court had no power to order a lateral transfer to another court, is of no assistance as that case concerned the High Court transferring a case from itself to a subordinate court which in effect is a vertical transfer.

[40] It was also held in *Majlis Peguam & Anor v Tan Sri Dato' Mohamed Yusoff Mohamed*, that the better view is not to interpret s 25(2) of the CJA in a narrow and pedantic manner.

[41] To put the matter beyond doubt, it is pertinent to refer to the case of *Malacca Securities Sdn Bhd v Loke Yu* [1999] 6 MLJ 112; [1998] 3 CLJ 22, where Augustine Paul J (as he then was) held:

> The first is whether the word 'court' in the phrase 'Power to transfer any proceeding to any other *court* ...' (emphasis added) in para. 12 is confined in its meaning to the High Court in Malaya and the High Court in Sabah and Sarawak bearing in mind the definition of the word 'court' in s 3 of the CJA as 'the High Court' and the phrase 'the High Court' as 'the High Court in Malaya and the High Court in Sabah and Sarawak or either of them, as the case may require' or whether it extends to the branch High Courts. In my opinion the use of the word 'any' in the phrase 'Power to transfer any proceeding to *any* other court ...' (emphasis added) is clear indication that the word 'court' goes beyond the two High Courts. If the intention of the legislature was to confine the operation of para. 12 to just the two High Courts then it would have used the word 'the' instead of 'any' as in s 23(1) of the CJA. It must be noted that a definition provided for a word or phrase by s 3 of the CJA does not apply if the context in which it is used otherwise requires. Thus the context of para 12 requires the word 'court' to be given a meaning other than that provided in the definition section of the CJA to include branch High Courts.

> The second is that *the power given to transfer any proceeding is only from a High Court 'to' any other High Court and not 'from' any other High Court to itself. This is made manifestly patent by the use of the word 'to' in the phrase 'Power to transfer any proceedings to any other court …* (Emphasis added.) in para 12. That the power to transfer proceedings is restricted as I have described finds further support in the language employed in para. 12 itself in the case of transfer of proceedings in the Subordinate Courts which is widely worded to authorise transfer '205 to or from any Subordinate Court …'. *It is therefore clear that a High Court is only empowered to transfer an action pending before it 'to' any other High Court and not 'from' any other High Court to itself.* Consequently an order made by a High Court transferring a case to itself from another High Court would be without jurisdiction and, accordingly, ultras vires the explicit words of para 12. (Emphasis added.)

[42] As far as the argument advanced that it is only the CJM who has the power to order such transfer, I need only quote what was held in *Riviera Bay Resort & Condo Management Sdn Bhd v Sri Rimba Mentari Development Sdn Bhd* as follows:

> Since the applicant applied to the Chief Judge of Malaya for an order to transfer and was then directed by the latter to apply to the High Court, the learned Chief Judge, thus, must have contemplated that the High Court has unlimited jurisdiction. (*Scotch Leasing Sdn Bhd (In receivership) v Chee Pok Choy & Ors* [1997] 2 MLJ 105; [1997] 2 CLJ 58 followed) (p 725 e).

[43] I also find for the aforesaid reasons that there is no merit to the contention raised by learned counsel for the respondent that such transfer would offend art 8 of the Federal Constitution.

[44] The applicant submitted that they would formally apply for a joint trial in the case of ROSMAH AMLA because that is the main case. They say so for the following reasons:

(a) the offence under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 falls under the definition of 'unlawful activity' and 'serious offence' under s 3(1) of the AMLATFPUAA 2001;

(b) the elements of money laundering offence under s 4(1)(a) of the AMLATFPUAA 2001 require proof of an offence under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 in order to prove the charges in ROSMAH AMLA; and/or

(c) alternatively, an offence under s 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 may be used as circumstantial evidence to prove the offences in ROSMAH AMLA.

[45] The applicant also submitted that arrangements have been put in place

much earlier before the High Court judge in Court No 2 to facilitate the hearing of the joint trial application.

[46] They state for example, that the case of RIZAL SOLAR has been transferred to High Court No 2 on 18 February 2019, without any opposition from learned counsel. The applicants written submission for the joint trial application had been filed in the same court and submitted to counsel for the respondent in the foregoing three cases. Counsel in ROSMAH AMLA too had filed written submissions opposing the application in the same court.

[47] To that end they argue that the transfer of ROSMAH SOLAR to High Court No 2 is expedient for the ends of justice as it will enable all parties concerned to state their stand on the joint trial application.

[48] The applicant still further submitted that their application for a joint trial of the foregoing cases and court's determination of its merits could not be proceeded with if the transfer is not ordered. Hence, the facts and indeed the circumstances of the case warrant a transfer of this case to High Court No 2.

[49] Contrary to the contention of learned counsel for the respondent that the transfer application before this court to Court No 2 is an exercise in judge shopping, I agree with the submission of counsel for the applicant based on their arguments above and the exigencies of the circumstances, this case is best tried together with the *Rizal Mansor* case ('RIZAL SOLAR').

[50] The charge against the said Rizal Mansor now pending in Court No 2 is for soliciting a bribe for the respondent while the charge against the respondent in the case before this court is for soliciting a bribe through the said Rizal Mansor ('ROSMAH SOLAR').

[51] Should this case not be transferred, it would mean that this court will be trying the respondent here for soliciting a bribe through an accused who is being tried in another court and that other court will be trying that same accused for soliciting a bribe for the respondent.

[52] This would of course mean that the prosecution will encounter the situation where they will be calling the same set of witnesses twice. The allegation of mala fides that as soon as this case is transferred to Court No 2, the said Rizal Mansor will turn crown witness against the respondent, is mere speculation and conjecture.

[53] In any event, the prosecution had exercised its prerogative to charge both the said Rizal Mansor and the respondent in this case separately. It just so

happened that according to the system of registration, the case involving the said Rizal Mansor was registered in Court No 2. Now, for the reasons stated above, the applicant applies to have these cases jointly tried.

[54] Viewed from this perspective, there is no merit to the argument that the applicant had indulged in judge shopping or that there is anything sinister involved in this application beyond the mere fact that it is convenient to have a joint trial under the circumstances.

[55] Under all the circumstances therefore, and for the reasons stated, I granted the application sought for by the applicant. Order accordingly.

Application granted.

Reported by Ahmad Ismail Illman Mohd Razali